

March 20, 2009

RE: Environmental Assessment (EA) for Robert Spoklie's Evans Pit Amendment Application

To All Interested Parties:

Robert Spoklie has submitted an amendment application to the Department of Environmental Quality (DEQ) for an existing gravel mining operation in Flathead County. This site is located 1.5 miles southwest of West Glacier in rolling forested hills between the Burlington Northern Railroad (BNRR) tracks to the west, Belton Stage Road to the east and undeveloped land to the north. The amendment would increase the permit area from 2.0 to 24.0 acres with setbacks from adjacent property lines, would increase the maximum depth to be mined from 30 to 70 feet, and would increase the estimated amount of gravel to be removed from 46,400 to 1.8 million cubic yards. The amendment application proposes changing the reclaimed use from trees to pasture, establishing a final date of reclamation of December 2035 where there is currently none, and increasing the performance bond from \$1,500 to \$52,050. The application contains an updated Plan of Operation and new map.

The applicant also proposes to add a wash plant to the site. In addition, a small amount of offsite-generated asphalt and concrete would be brought and stored onsite and recycled through the crusher.

DEQ has prepared an EA on this proposal. The EA is available on the DEQ website at <http://www.deq.mt.gov/ea/opencut.asp>.

DEQ will accept written comments on the EA until 5:00 P.M. on Friday, April 3, 2009. You may email your comments to rsamdahl@mt.gov, or send them by fax or letter to one of the fax numbers or addresses listed below.

Department of Environmental Quality
Industrial and Energy Minerals Bureau
109 Cooperative Way, Suite 105
Kalispell, MT 59901
Ph: (406) 755-8985; Fax: 755-8977

Department of Environmental Quality
Industrial and Energy Minerals Bureau
2001 11th Ave.
Helena, MT 59601
Ph: (406) 444-4970; Fax: 444-4988

Sincerely,

Neil Harrington, Chief
Industrial and Energy Minerals Bureau
Phone: (406) 444-4973
Fax: (406) 444-1923
E-mail: neharrington@mt.gov

NH/nh

ENVIRONMENTAL ASSESSMENT – March 2009

PROPONENT:	Robert Spoklie	SITE NAME:	Evans
LOCATION:	NE4NW4, Section 3, T31N, R19W	COUNTY:	Flathead

TYPE AND PURPOSE OF ACTION:

Robert Spoklie has submitted an application to amend an existing gravel mining and processing permit near Belton Stage Road in Flathead County. A map showing the location of the mine site is presented as Area Location Map, Figure 1. This site is located 1.5 miles southwest of West Glacier in rolling forested hills between the Burlington Northern Railroad (BNRR) tracks to the west, Belton Stage Road to the east and undeveloped land to the north at an approximate elevation of 3,290 feet, mean sea level. Soils in this area average six inches and all would be salvaged. The water table is deep and there is no flowing water on the site. There are two inhabited residences within 500 feet of the site on the east side. No new access roads would be constructed under this amendment. There are currently no limitations on the hours of operation at this site, but this amendment would shorten hours for mining, crushing, and hauling from 24/7 to Monday through Saturday from 7am to 7pm. Equipment maintenance would occur anytime during daylight hours. No crushing would occur from June 1st to August 21st, nor from November 15th to March 12th leaving approximately 140 days, 70 in the spring and 70 in the fall. The amendment would increase the permit area from 2.0 to 24.0 acres with setbacks from adjacent property lines, would increase the maximum depth to be mined from 30 to 70 feet, would increase the estimated amount of gravel to be removed from 46,400 to 1.8 million cubic yards. The amendment application contains a more detailed and modern Plan of Operation and a new map, and proposes changing the reclaimed use from trees to pasture, establishing a final date of reclamation of December 2035 where there is currently none, and increasing the performance bond from \$1,500 to \$52,050. Although the original permit was only issued for 2 acres in March 1991, more than 8 acres had been disturbed at this site by prior mining. The requested increase to 24 acres would include all disturbed areas, and only 8 acres of land would be in mining disturbance at any time. The slopes of the reclaimed area would be reduced to 3:1 or less and the floor would be graded fairly flat.

The applicant also proposes to add a wash plant to the site. The wash plant would use water from an onsite well and would use a maximum of about 400 gallons per minute, at least 95% of which would be recycled. The recycling process is voluntarily employed here to conserve water. Consumptive loss of about 20 gallons per minute (12,000 gallons per day) for evaporation, infiltration, and wetting of aggregate products would need to be made up from the well. This is within the range of typical water consumption for wash plants. Prior to an onsite well being drilled, water for dust control by water trucks would be brought onto the site from an off-site source. After an onsite well is drilled, it would supply water for dust control and would pump an average of 10,000 gallons per day during summer hours based on two 5,000 gallon water trucks per day.

A small amount of off-site-generated asphalt and concrete would be accepted and stockpiled onsite, and recycled through the crusher to conserve resources. Any metal rebar or other reinforcement material found in the concrete would be extracted by a magnetic separator and sent to Kalispell for metal recycling. The maximum amount of recycle material that could be stockpiled onsite at any time is 200 cubic yards. Concrete may be buried for clean fill if it has no exposed rebar. Off-site-generated asphalt cannot be buried onsite for any reason.

The site, originally permitted in 1991 by Joseph Evans, was taken over by Spoklie in 2004. The Canyon Plan, a part of the Flathead County Master Plan and the Canyon Area Land Use System, was adopted by Flathead County in 1994. Several permit amendments to increase the size of the permit area were approved by DEQ after Spoklie's acquisition of the original permit in 2004. Those approvals were granted inadvertently without proper zoning compliance documentation from Flathead County. In September 2005, Spoklie was ordered by Flathead County to cease operations at the pit due to a conflict with the West Glacier Zoning District and the Canyon Area Land Use Regulatory System. In January 2006 the county denied Spoklie's land use application, and DEQ issued a Violation Letter to Spoklie requiring him to cease operations pending zoning approval. In August 2006, DEQ informed Spoklie that he was prohibited from any mining or mining-related activity at the site until further notice, pending outcome of his appeal of the county's January 2006 decision. In April 2007, the county signed the DEQ Zoning Form after reaching a Settlement Agreement (SA) in District Court over the lawsuit between Flathead County, Spoklie, and a group of private individuals (See Figure 3 – Settlement Agreement), after which DEQ allowed Spoklie to operate again on his original 2-acre permit area. The previously approved amendments of the original state mining permit were determined to be invalid by DEQ in the summer of 2007.

The new amendment applies to the original 2-acre permit and a proposed 22-acre expansion, and contains a new Plan of Operation that includes certain parts of the SA. Under the terms of the SA, Spoklie is not required to obtain a Conditional Use Permit from Flathead County, but is required to mitigate impacts in various ways including not constructing concrete and asphalt batch plants, paving Belton Stage Road, and installing a hiking/bicycle path.

This environmental assessment (EA) is required under the **Montana Environmental Policy Act (MEPA)**. An EA functions to identify, disclose and analyze the impacts of an action, in this case operating a gravel pit on which the state must make a decision, so that an informed decision can be made. MEPA sets no environmental standards, even though it requires analysis of both the natural and human environment. This document may disclose many impacts that have no legislatively required mitigation measures or over which there is no regulatory authority. The state legislature has provided no authority in MEPA to allow the Department of Environmental Quality (DEQ) or any other state agency to require conditions or impose mitigations on a proposed permitting action that are not included in the permitting authority and operating standards in the governing state law, such as the Opencut Mining Act, the Clean Air Act of Montana, or any other applicable state environmental regulatory law. Beyond that, a company may agree to voluntarily modify its proposed activities or accept permit conditions.

The state law that regulates gravel-mining operations in Montana is the **Opencut Mining Act**. This law and its pursuant rules place operational guidance and limitations on a project during its life, and provide for the reclamation of land subjected to opencut materials mining. This law requires that a surety bond, cash deposit or other financial instrument be submitted to the state to cover the complete costs of reclaiming the site to its approved, post-mining land use if the permittee fails to reclaim the site as required by the law, the rules, and the permit.

The permit decision cannot be based upon the popularity of the project, but upon whether or not the proponent has met the requirements of the Opencut Mining Act and pursuant rules.

IMPACTS ON THE PHYSICAL ENVIRONMENT	
RESOURCE AND EXAMPLE/GUIDANCE QUESTIONS	POTENTIAL IMPACTS AND MITIGATION MEASURES
1. GEOLOGY AND SOIL QUALITY, STABILITY AND MOISTURE:	<p>The proposed mine site is located on a bench above the Middle Fork of the Flathead River, 2.7 miles northeast of the confluence with the North Fork. The site has a relatively thick accumulation of glacial outwash material that was deposited by melt water flowing outward from Glacier Park through the steep valley now occupied by Lake McDonald. Outwash deposits are primarily composed of sand and gravel that can be up to 140 feet thick.</p> <p>The average topsoil and overburden depths in the permit area average 6 inches each. The topsoil would be salvaged and used to construct berms. Following mining activities, the soils would be replaced, disked and seeded to grass. There are no fragile, compactable, or unstable soils present and no unusual geologic features or special reclamation considerations.</p>
2. WATER QUALITY, QUANTITY AND DISTRIBUTION:	<p>This site is located approximately 200 feet above the elevation of the Middle Fork of the Flathead River, which runs southwest and is more than 1,000 feet west of the proposed permit area. The river is separated from the site by the BNRR grade and its service road. No surface runoff from the site can reach the river.</p> <p>Groundwater in this area is encountered below a clay layer at approximately 250 feet below the ground surface as seen in the nearby Ford domestic water well, and is substantially below the proposed level of the finished pit.</p> <p>The proposed water well would be drilled to a depth of about 400 feet and would be pumped at a rate of 25 gallons or less per minute. A steel tank would be used to store water for peak use and fire suppression. Peak daily water consumption on days when dust and/or fire control and a wash plant are all simultaneously needed could be as much as 22,000 gallons. The expected range will be 0 to 22,000 gallons/day, but the average annual water volume demand is estimated to be less than 1.0 million gallons. Numerous days and months there would be no consumption at all. Dust and/or fire control water consumption could average 10,000 gallons per day on those days when needed during the months of May through October. Wash plant operations consumption, which would use a recycling process with an estimated consumptive loss of about 20 gallons/minute for evaporation, infiltration, and aggregate wetting, could average 12,000 gallons per day. While there are a total of 179 days when gravel crushing and washing could occur, it is likely that such activities would average less than 60 days/year due to product demand and mobility of the screening and crushing equipment. The same relative demand is expected for dust and/or fire control. Therefore, assuming an average of 60 screening and washing days and 60 days of dust and/or fire control watering, the average annual water volume demand is estimated to be less than 1.0 million gallons. Pumping this well at a rate of about 25 gallons or less per minute over an expected average 10 hours per day for 45 days or less is expected to have no discernable effect on surrounding water wells because the aquifer is a relatively high producer as shown in the GWIC reports and pumping at maximum capacity will not occur continuously (Spoklie 2009).</p>
3. AIR QUALITY:	<p>Air quality impacts as a result of this amendment would be minimal. Crusher operation, hauling and other typical activities already exist at the site. This amendment would extend those impacts into the future. An asphalt plant was earlier proposed, but the proposal has been withdrawn. Although heavy equipment and truck traffic create dusty conditions, the operator is required to control dust to a reasonable degree. Topsoil berms would be vegetated to prevent dust generation. The site is not within a Class I airshed.</p> <p><u>Cumulative impacts</u></p> <p>In accordance with the SA, about one mile of Belton Stage Road from the Highway 2 intersection south on Belton Stage Road to the intersection of the pit access road would be paved as a way of mitigating the dust in the area from vehicular traffic on the county road.</p>
4. VEGETATION COVER, QUANTITY AND QUALITY:	<p>The existing vegetation consists of second growth timbered forest land. In some cleared areas and roads, pasture grasses have been planted, and much of the open areas are infested with knapweed, thistle and mullein. The operator has begun an aggressive spraying program to</p>

	control the noxious weeds. The trees and other vegetation would be removed as mining proceeds. Upon completion of mining in a particular area, disturbed areas would be re-soiled and planted with pasture grasses compatible with the proposed reclaimed use. An Invasive Plant Management Plan (i.e. Weed Plan) has been obtained from the Flathead County Weed and Parks Department that specifies weed control practices.
5. TERRESTRIAL, AVIAN AND AQUATIC LIFE AND HABITATS:	The land has been logged over several times and at least 8 acres has already been disturbed by mining. Occasional deer, elk, bears, rodents, song birds, coyotes, raptors, and other animal species may frequent the site but no nesting sites or dens were reported at the project site. Population numbers for these species are not known. These animals would be displaced on a small scale as mining progresses, but some would re-inhabit the area as reclamation follows behind mining. Permanent impacts on wildlife are considered to be minimal.
6. UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES:	<p>The Montana Natural Heritage Program has listed some plant and animal species of concern in this general area. Animal species listed as G5 are the Canada Lynx, Bald Eagle, Goshawk, Common Loon, Fisher, Bobolink and the Northern Leopard Frog. The Global Ranking as G5 means the species is common, widespread, and abundant (although it may be rare in parts of its range). It is not vulnerable in most of its range. Listed as G4 are the Gray Wolf, Wolverine, Grizzly Bear, Westslope Cutthroat Trout, Harlequin Duck and the Western Toad. The Global Ranking as G4 means that the species are uncommon but not rare (although they may be rare in parts of their range), and usually widespread. Apparently they are not vulnerable in most of their range, but possibly cause for long-term concern. Listed as G3 is the Bull Trout. The G3 Ranking means that the species is potentially at risk because of limited and/or declining numbers, range, and/or habitat, even though it may be abundant in some areas.</p> <p>Plant species listed as G5 are the Maidenhair Spleenwort, Red-root Flatsedge, Slender Cottongrass and the Velvetleaf Blueberry. Species listed as G4 are the Deer Indian Paintbrush, Latah Tule Pea and the Short-styled Thistle.</p> <p>No specific observations of these plants or animals, nesting sites or dens were reported at the project site. Fish species, for example, were listed due to their presence in the Middle Fork of the Flathead River located 1,000 feet west of the site. Site inspections have not revealed any endangered or threatened plant or animal species that would be directly affected.</p>
7. HISTORICAL AND ARCHAEOLOGICAL SITES:	There are no known historical or archeological sites within the proposed mine area. The site has been previously disturbed by modern man by mining and logging, thus altering the integrity of resources that may have existed. A surface reconnaissance did not discover any cultural, historical or archeological resources. The operator would give appropriate protection to any values or artifacts discovered in the affected area. If significant resources are found, the operation would be routed around the site of discovery for a reasonable time until salvage could be conducted. The State Historic Preservation Office would be promptly notified.
8. AESTHETICS:	<p>The site is located on a high gravel bench above the Middle Fork of the Flathead River between Belton Stage Road and the BNRR tracks in an area of rolling forested land used in the past for logging, gravel mining, post and pole manufacturing and wood waste disposal. The site is isolated from the public and is not readily visible. It can be seen at a distance from certain high vantage points within Glacier National Park as it lies between the road and the railroad tracks.</p> <p>Mitigation of impacts agreed to by Spoklie in the SA with Flathead County include restricted hours of operation, setbacks from property lines, limited months of crushing, vegetated berms, a ban on asphalt and concrete batching, and improvements on Belton Stage Road leading to the site (see Figure 3 for the complete terms of the SA). Only eight acres at a time can be opened up for mining, and reclamation must be concurrent with mining. Upon completion, final reclamation would return the area to a visually acceptable landscape. This project is considered to be long-term (i.e. completion in 2035).</p>
9. DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AIR OR ENERGY:	There are no unusual demands on land, water, air or energy anticipated as a result of this amendment.
10. IMPACTS ON OTHER ENVIRONMENTAL RESOURCES:	Potential impacts that could affect Glacier National Park include dust and visual/aesthetic degradation. Typical activities associated with this gravel pit operation would include

	<p>stripping soils, mining and crushing gravel, and truck traffic and loader activity. All of these activities could raise dust that could be seen at a distance, and that could blow toward the park and impact general air quality. Measures would be taken to reduce dust and visual impacts by requiring the site to be watered during work times, by requiring paving of Belton Stage Road from the pit to Highway 2, by requiring all trucks to use the paved portion of the road, by seeding the soil berms and overburden stockpiles, by prohibiting crusher operation during the dry months from June 15 through August 21, and by limiting the amount of area that can be opened for mining to eight acres at a time.</p> <p>Other mitigating measures include operating the wash plant, crusher, and screening plant on the floor of the pit to reduce noise impacts, building a bicycle/hiking trail along the roadway, deflecting inward any lighting used for the operation and for safety or security, limiting the hours of operation to daylight times, eliminating mid-summer and full winter operations, limiting the size of the advertisement signage along the public road, posting signs against the use of compression breaks, and other items listed in the SA.</p>
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IMPACTS ON THE HUMAN POPULATION	
RESOURCE	POTENTIAL IMPACTS AND MITIGATION MEASURES
11. HUMAN HEALTH AND SAFETY:	<p>Heavy equipment such as crushers, trucks and loaders create operational hazards, but the operator must comply with all MSHA and OSHA regulations. Most of these hazards are associated with operations in the pit; because public access is restricted, the general public would not be exposed to operations. The operator must employ proper precautions to avoid accidents. Highwalls would be kept sloped at a safe 3:1 angle except for the working face. The open face would not exceed 500 linear feet at any time.</p> <p>Traffic</p> <p>The SA for the Evans Site places two traffic conditions on the operation:</p> <ul style="list-style-type: none"> • All gravel hauling via Highway 2 to the north or south shall be limited to accessing Highway 2 off the northern end of Belton Stage Road (Gravel may not be transported to Highway 2 from the pit south via Lake Five.). • All local gravel hauling in the Lake Five – Blankenship area will be done by the shortest route. <p>The Evans Site amendment application indicates that approximately 830,000 cubic yards of materials would be mined over 26 years, or about 31,900 cubic yards per year. Traffic that might be generated due to this operation can be calculated as follows: The average daily traffic (ADT) is computed by dividing the total volume of product proposed to be mined (830,000 cubic yards) by the estimated volume per truckload (20 cubic yards). This number of loaded-truck trips is multiplied by 2 to account for empty trucks returning to the site. Then, dividing the total truck trips by the 26-year life of operation and by 144 working days per year (6 days per week for 6 months) results in <u>22.1 ADT</u> (830,000 yds³/20 yds³/truck x 2 trips /26 years /144 days).</p> <p>Specific traffic counts for Belton Stage Road are unavailable, because it is not a state highway. Therefore, impacts of this additional traffic regarding public safety on that road are unknown, but much of the air quality and aesthetic impacts would be mitigated by paving. Nearly all of the material would be transported north to Highway 2 with the exception of local sales in the areas to the south.</p>
12. INDUSTRIAL, COMMERCIAL AND AGRICULTURAL ACTIVITIES AND PRODUCTION:	<p>Approximately 16 acres of un-mined land would be altered from forest use and changed to industrial/commercial use. Upon completion of mining, the land would be reclaimed to pasture.</p>
13. QUANTITY AND DISTRIBUTION OF	<p>This project would not likely create a significant number of new jobs, but could provide longer term, steady employment for those already working.</p>

EMPLOYMENT:	
14. LOCAL AND STATE TAX BASE AND TAX REVENUES:	Additional revenues would be generated for Flathead County and the State in the form of taxes by: (1) Collection of Resource Indemnity and Ground Water Tax (RIGWAT); (2) fuel taxes associated with hauling gravel; and (3) equipment taxes.
15. DEMAND FOR GOVERNMENT SERVICES:	The operation would require periodic site inspections by DEQ staff until such time as the site is completely reclaimed to the required post-mining use. These inspections would usually be performed in conjunction with other area operations.
16. LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS:	As discussed in the preface of this EA entitled Type and Purpose of Action, the site is within the West Glacier Zoning District. The Canyon Plan, a part of the Flathead County Master Plan and the Canyon Area Land Use System (CALURS) was adopted by Flathead County in 1994. The Flathead County Commissioners signed the SA on April 19, 2007; the SA states, in part, that the site is in compliance with all of the necessary planning and zoning requirements.
17. ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES:	Glacier National Park is fairly close to the proposed mine site across the Middle Fork of the Flathead River. Dust and aesthetic/visual impacts to the Park are addressed in Section 10 above. The Park would not be affected in any other discernable way. The mine site is not an access route to the Park nor is it an access point or adjacent to any other wilderness or recreational area. Therefore, this amendment would have no significant effect on recreational or wilderness activities.
18. DENSITY AND DISTRIBUTION OF POPULATION AND HOUSING:	The project would not add to the population or require additional housing for the reasons discussed under Section 13 above.
19. SOCIAL STRUCTURES AND MORES:	The site is primarily forested land with a railroad and minor rural-residential uses in the immediate area. The traditional land use has been forest logging with gravel mining and a pole production business. However, the area is also underlain by a high quality deposit of sand and gravel.
20. CULTURAL UNIQUENESS AND DIVERSITY:	This area is gradually shifting from forest to residential and industrial uses. This is a common transition in the valley associated with the current level of immigration into the valley.
21. OTHER APPROPRIATE SOCIAL AND ECONOMIC CIRCUMSTANCES:	None known.

Alternatives Considered:

<p>A. <u>Denial:</u> The pit would not be permitted and the owner of the gravel resource would be denied full utilization of his property at this time. However, another application could be submitted to revise the existing plan, or an application could be submitted for another site.</p> <p>B. <u>Approval of the application with significant associated conditions:</u> The Plan of Operation and the SA with the County have been written with significant conditions including: (1) limited hours of operation; (2) construction of visual and noise reduction berms; (3) establishment of a 100-foot or more buffer on the north, east and south boundaries of the mine; (4) prohibition of the use of asphalt and concrete batch plants; (5) restrictions on summer and winter crushing; (6) soil salvage and full reclamation that agrees with an approved Flathead County revegetation and weed management plan; and (7) dust control measures.</p>
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Public Involvement, Agencies, Groups, or Individuals contacted:

A Public Hearing was conducted by Flathead County in December 2005 to consider a Major Land Use Permit allowing expansion of the old existing pit. Flathead County Planning and Zoning office submitted the DEQ Zoning Form in April 2007 following the Flathead County District Court-ordered SA, thereby showing that the proposed operation met county zoning requirements.
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Other Governmental Agencies with Jurisdiction, List of Permits Needed:

Mine Safety and Health Administration for safety permit; DEQ for Air Quality Permit.
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Magnitude and Significance of Potential Impacts:

Impacts on the general environment would not be significant because of the scope and location of the project, the lack of significant or threatened wildlife or habitat, and because of the mitigation measures placed in the Plan of Operation and the SA.

Regulatory Impact on Private Property:

The analysis conducted in response to the Private Property Assessment Act (PPAA) indicates no impact is expected on the use of private property. The Department does not plan to deny the application or impose conditions that would restrict the use of private property so as to constitute a taking. See attachment for PPAA checklist assessment.

References cited:

Flathead County District Court. April 19, 2007. Settlement Agreement and Mutual Release of All Claims between Spoklie & Hoover, Robert Spoklie, Flathead County, Board of Flathead County Commissioners.

Flathead County Planning and Zoning. April 30, 2007. Approved DEQ Zoning Form.

Spoklie, Robert, 2009. March 3, 2009. Personal communication from Robert Spoklie on water use.

RECOMMENDATION FOR FURTHER ENVIRONMENTAL ANALYSIS:

☐ EIS ☐ MORE DETAILED EA ☒ NO FURTHER ANALYSIS

INDIVIDUALS OR GROUPS CONTRIBUTING TO THIS EA: _____

Written by: **Rod Samdahl, Reclamation Science Specialist, Opencut Mining Program**

Reviewed by: **Neil Harrington, Chief, Industrial and Energy Minerals Bureau**

Figure 1 – Area Location Map

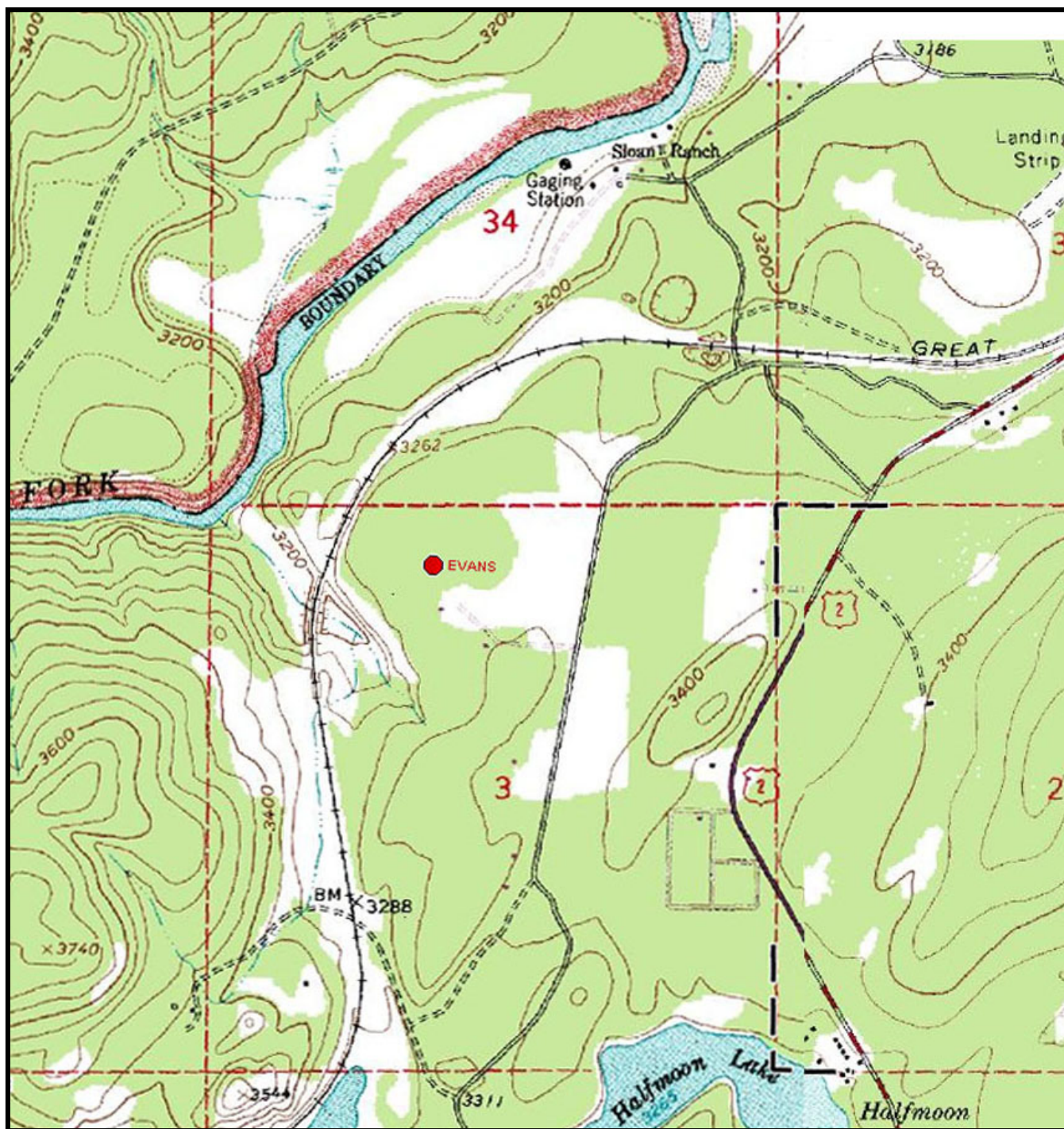


Figure 2 – Site Map

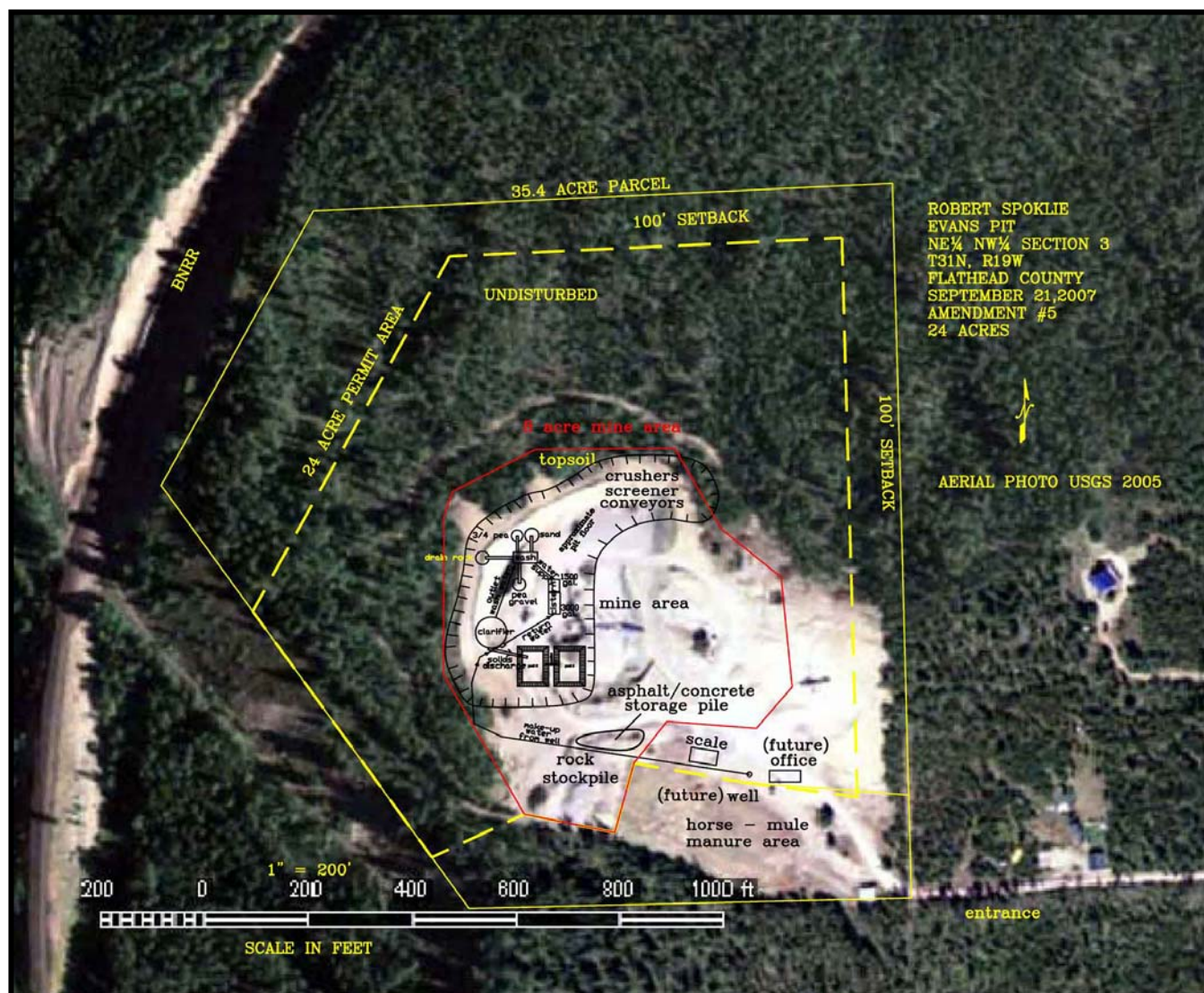


Figure 3 – Flathead County Settlement Agreement

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

RELEASORS: Spoklie & Hoover, a general partnership, and Robert Spoklie.

RELEASEES: Flathead County and Flathead County Board of County Commissioners.

DESCRIPTION OF CLAIMS: All claims arising out of the cause of action described below.

SETTLEMENT CONSIDERATION: The Settlement Terms and Joint and Mutual Covenants and Promises set forth below.

CIVIL CAUSE: Montana Eleventh Judicial District Court, Flathead County, Cause No. DV-06-152A, as amended.

AGREEMENT: This Settlement Agreement and Mutual Release of all claims.

1. Release

The undersigned Releasors and Releasees, in consideration of the mutual promises and covenants herein contained and those contained in the Agreement, fully and forever release and discharge Releasors, Releasees, their heirs, personal representatives, successors, assigns, agents, partners, employees and attorneys from any and all actions, claims, causes of action, demands, or expenses for damages, whether asserted or unasserted, known or unknown, foreseen or unforeseen, past or future, arising out of the described claim or which were or which could have been brought as causes of action in the civil cause above described or any other action including but not limited to breach of contract, any tortuous conduct, fraud, constructive fraud or any other breach of duty of any kind in connection with the relationship between the parties to this agreement arising from the issues set forth in Cause No. DV-06-152A, as amended.

This Agreement is intended to fully satisfy all those claims described above and all of the damages which may have been asserted in connection with those claims whether or not plead in the complaint including all personal injury and sickness, mental and emotional injuries, any property or financial loss and any other damage whatsoever.

2. Future Damages

Inasmuch as the damages, and losses resulting from the events alleged by Releasors may not be fully known and may be more numerous or more serious than now understood or expected, the Releasors and Releasees agree, as a further consideration of this agreement, that this Agreement applies to any and all damages and losses, resulting from the allegations described in Cause No. DV-06-152A even though now unanticipated, unexpected and unknown, as well as any and all damages and losses which have already developed and which are now known or anticipated.

3. Settlement Terms and Joint Promises and Covenants

- A. Releasors will consult with the Coram-Martin City Fire District in developing a fire suppression and emergency evacuation plan, and shall file a written plan with the Fire District and the Flathead County Planning & Zoning Office.
- B. After the date of this Agreement, Releasors will not conduct any new mining within a minimum 100 foot buffer from the edge of the pit to the property boundaries on the North, South, and East sides of the pit.
- C. The total area available for mining after the date of this Agreement shall not exceed a maximum of 24 acres. Releasors agree they will not seek any expansion of the opencut mining permit beyond 24 acres. No vehicle or equipment parking or other staging shall be permitted within the 100 foot buffer except the existing types of uses in the southeast area of the property which include parking, office and weighing scale.
- D. Hours of operation for gravel extraction, crushing, and hauling will be 7:00 AM to 7:00 PM, Monday through Saturday. No crushing is permitted from June 15 through August 21 and from November 15 through March 12 each year.

- E. Releasees acknowledge that the only approach permit required is that for access from Belton Stage Road.
- F. Releasors and Releasees will work together to pave about one mile of Belton Stage Road from the Highway 2 intersection south on Belton Stage Road to the intersection of the pit access road as follows:
- 1) Releasees will secure and mark the boundaries of the 60 foot right of way on Belton Stage Road.
 - 2) Releasees will remove all trees, brush, and stumps from the 60 foot right of way on Belton Stage Road.
 - 3) Releasors will provide all equipment and materials and will prep the road pursuant to Releasees specifications.
 - 4) Releasees will furnish all hot mix and half the trucking to the road site and a double-drum roller. Releasors will furnish half the trucking to the road site and the lay-down machine.
- G. Releasors will construct a 6-foot wide gravel bicycle path within the Releasees easement adjacent to Belton Stage Road from the Highway 2 intersection south on Belton Stage Road to the intersection of the pit access road.
- H. Blasting operations, asphalt batch plants and concrete batch plants, or other facilities for manufacturing asphalt and concrete are expressly prohibited on this property.
- I. Dust abatement for extraction, processing, and hauling will be performed consistent with Montana Department of Environmental Quality (“DEQ”) and Flathead County Environmental Health Department regulations to limit any impacts to the surrounding properties and general air quality.
- J. All gravel hauling via Highway 2 to the north or south shall be limited to accessing Highway 2 off the northern end of Belton Stage Road (Gravel will not be transported to Highway 2 from the pit south via Lake Five.). All local gravel hauling in the Lake Five – Blankenship area will be done by the shortest route.
- K. Any lighting used for the operation will be directed in such a way as to be contained within the boundaries of the property and shall be hooded, screened or directed in a manner that it will not be detrimental to the adjoining property owners or the National Park. Lights will be extinguished at the close of business each day, except for lighting deemed necessary by Releasors for safety and security purposes.
- L. Soils stockpiled onsite will be bermed to a maximum of eight feet. Berms shall be maintained to reduce noise and visual impact of the extraction operation on surrounding ownerships.
- M. Stockpiled topsoil and overburden berms will be revegetated in accordance with a plan approved by the Flathead County Weed and Parks Department and DEQ. A signed Invasive Plant Management Form will be obtained from the County Weed and Parks Department and submitted to Flathead County Planning and Zoning Office. Only certified native seed types and plants recommended by Glacier National Park are to be used for revegetation. At a minimum, all activities at the site must comply with the Montana Noxious Weed Act and any applicable local regulations, including § 7/22/2116, MCA.
- N. Pockets and stagnant pools of water resulting from surface drainage will be treated to eliminate breeding places for mosquitoes and other insects, or will be periodically drained to prevent the creation of such breeding places. All larvicides used will be environmentally safe.
- O. Any organic materials imported to the site must be commingled and spread evenly over areas for reclamation within one week of importation, and no such materials may be temporarily or permanently stockpiled on the property.
- P. The Releasors will comply with the Montana Opencut Mining Act, as administered by DEQ. The conditions of this Agreement are in addition to the requirements of the State. Releasors shall provide proof that a valid Reclamation Permit exists.
- Q. Signage as specified by the Flathead County Road Dept., will be posted along Belton Stage Road at the approach to the site to alert vehicular and pedestrian traffic to the presence of heavy truck travel at the intersection of the access road and Belton Stage Road. Releasors shall also place approved signs restricting the use of Engine Compression (Jake) brakes on Belton Stage Road.
- R. One identification sign shall be allowed to a maximum size of three (3) feet by three (3) feet, within the Releasees right of way at a mutually agreeable location along Belton Stage Road. Sign information shall be limited to the street

address, business name, and hours of operation ONLY, no advertising or product/materials sold may be displayed on the sign.

S. All parking areas for employee vehicles and trucks will be provided onsite.

T. A plan of operations will be signed and approved by the Releasors and DEQ and a copy submitted to Flathead County Planning and Zoning Office. The parties acknowledge that any plan of operations is, by its nature, required to be consistent with local zoning regulations, DEQ regulations, and the terms of this Settlement Agreement. The approved plan of operations must include a provision limiting the maximum number of acres which are open at any one time for mining operations to eight acres, and that before additional acreage may be opened for mining, an equivalent amount of acreage must be reclaimed. The parties acknowledge that any future amendments to the CALURS or other zoning regulations will not affect the plan of operations approved pursuant to this paragraph.

U. Onsite fuel storage will be in conformance with DEQ regulations, including storage containment and monitoring requirements and will be located a minimum of 200 feet from the BNSF Right-of-Way and any property boundary.

V. Releasors shall not be required to obtain a Conditional Use Permit per Flathead County Zoning Regulations Chapter 2, Section 2.06.

W. Releasees approve the Spoklie and Hoover gravel operation as described in their amended application for a Major Land Use Review dated October 24, 2005, and as modified by the settlement terms herein, and shall provide to DEQ a certification that such operation complies with applicable local zoning regulations pursuant to § 82-4-432(2)(c).

X. Upon full execution of this Agreement, Releasors may immediately begin operations consistent with an approved plan of operations and all required DEQ permits. The parties acknowledge that time is of the essence in completing the required improvements to Belton Stage Road and the gravel pathway, and will use their cooperative best efforts to complete construction by October 1, 2007.

4. No Admission of Liability

It is understood that the above-mentioned settlement terms are accepted as the sole consideration for full satisfaction and accord to compromise a disputed claim and that neither the payment of any sum nor the negotiations for settlement shall be considered as an admission of liability on the part of any party to this Agreement.

5. No Additional Claims

Releasors and Releasees represent that no additional claims are contemplated against each other.

6. Stipulation for Dismissal With Prejudice

The parties to this Agreement stipulate and agree that they shall dismiss with prejudice, as fully settled upon the merits, the above-described civil action. Each party shall pay their respective costs and attorneys' fees.

7. Disclaimer

The Releasors and Releasees have carefully read this full Release, discussed its legal effect with their attorney, understand the contents thereof, and sign the same of their own free will and accord.

This Release shall be binding upon the parties' heirs, successors, personal representatives and assigns.

8. Counterparts.

This Agreement may be executed in counterparts, which shall have the same force and effect as if executed in the original. Executed counterparts which are transmitted by facsimile shall also have the same force and effect as if executed in the original.

9. Authority.

Each person signing this Agreement on behalf of each of the parties represents that he has full power and authority to execute this Agreement and to bind the party(s) for which he is signing.

DATED this 19th day of April, 2007.

SPOKLIE & HOOVER, a general
partnership

ROBERT SPOKLIE

By: _____
Robert Spoklie,
Authorized Partner, Releasor

Robert Spoklie
Releasor

FLATHEAD COUNTY and FLATHEAD
BOARD OF COUNTY COMMISSIONERS

By: _____
Joe Brenneman, Chairman, Releasee

APPROVED AS TO FORM:

BROWNING, KALECZYC, BERRY
& HOVEN, P.C.

Attorneys for Spoklie & Hoover and
Robert Spoklie

APPROVED AS TO FORM:

GARLINGTON, LOHN & ROBINSON,
P.L.L.P

Attorneys for Flathead County and
Flathead Board of County Commissioners

By: _____
Mark D. Etchart

By: _____
Alan F. McCormick

PRIVATE PROPERTY ASSESSMENT ACT (PPAA) CHECKLIST

PROPERTY DESCRIPTION: Section 3, T31N, R19W, Flathead County

COMPANY NAME: Robert Spoklie, Evans Site

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PPAA?

YES	NO	
X		1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
	X	2. Does the action result in either a permanent or indefinite physical occupation of private property?
	X	3. Does the action deprive the owner of all economically viable uses of the property?
	X	4. Does the action deny a fundamental attribute of ownership?
	X	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? (If answer is NO, skip questions 5a and 5b and continue with question 6.)
		5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
		5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
	X	6. Does the action have a severe impact on the value of the property?
	X	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? (If the answer is NO, skip questions 7a-7c)
		7a. Is the impact of government action direct, peculiar, and significant?
		7b. Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
		7c. Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if YES is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if NO is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with § 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.